

FINAL STATEMENT OF REASONS

The Initial Statement of Reasons is incorporated by reference.

UPDATES TO THE INITIAL STATEMENT OF REASONS

The Notice of Proposed Regulations was published on April 27, 2012, which began the public comment period. The Department's Notice of Change to Regulations (NCR) #12-02 was also mailed the same day, in addition to being posted on the CDCR internet and intranet websites. The public hearing was held on June 18, 2012, the final day of the public comment period. No one provided oral comment at the public hearing.

During the 45-day public comment period, 6 written comments were received from 4 individuals. These comments are discussed below under the heading "Summaries and Responses to Written Public Comments."

Specific Purpose and Rationale for each Section Amended:

Subchapter 2. Inmate Resources

Article 6. Legal Documents

3162. Legal Forms and Duplicating Services.

Subsections 3162(a) through 3162(d)(10) are unchanged.

Subsection 3162(e) is amended to add new text which establishes the delegation of authority to a staff person, to be identified by the Warden of an institution, for placing restrictions on inmates in regards to the law library and duplication of documents. This is necessary to establish a standard statewide process, and allow non-custody staff responsible for operation of the law library to make an informed decision about which documents are needed to be copied to advance litigation, and which documents are already available to the court.

DETERMINATION

The Department has determined that no alternative considered would be more effective in carrying out the purpose of this action or would be as effective and less burdensome to affected persons.

ASSESSMENTS, MANDATES, AND FISCAL IMPACT

This action will neither create nor eliminate jobs in the State of California, nor result in the elimination of existing businesses, or create or expand businesses in the State of California.

The Department, in proposing amendments to these regulations, has not identified nor has it relied upon any technical, theoretical, or empirical study, report, or similar document.

The Department determines this action imposes no mandates on local agencies or school districts; no fiscal impact on State or local government, or Federal funding to the State, or private persons. It is also determined that this action does not affect small businesses nor have a significant adverse economic

impact on businesses, including the ability of California businesses to compete with businesses in other states because they are not affected by the internal management of State prisons; and no costs or reimbursements to any local agency or school district within the meaning of Government Code Section 17561. The Department has determined that the proposed action will have no significant effect on housing costs. Additionally, there has been no testimony or other evidence provided that would alter the Department's initial determination.

PUBLIC HEARING COMMENTS

Public Hearing: Held June 18, 2012 at 9:00 a.m.

No one commented at the public hearing.

SUMMARIES AND RESPONSES TO WRITTEN PUBLIC COMMENTS:

COMMENTER #1

Comment 1: Commenter objects to the proposed regulation changes, stating that implementation would allow Wardens to place under-trained, under-educated, and inexperienced staff into a position to determine whether or not inmates get "legal copies" they need for litigation purposes. Commenter states that denying an inmate due process and access to the courts would be in violation of state and federal constitutions. Commenter also contends that the existing regulations should not be changed, but should instead be followed by staff rather than circumvented, as is the commenter's opinion of past practices.

Accommodation: None.

Response 1: It is the Warden's responsibility to ensure that regulations are followed and all employees are trained and meet the qualifications for the job function they are fulfilling. The new language will allow the Warden to select a qualified employee for the review without being restrained by the requirement for a Captain-level equivalent position. The proposed new language will not prohibit an inmates' due process or access to the courts. The law does not bar non-custody law library staff who manage prison law libraries from imposing reasonable limits on duplication services.

COMMENTER #2

Comment 2: Commenter initially shares information and personal history that is unrelated to the proposed regulation change. Commenter states that, as an indigent inmate, there have sometimes been issues with getting copies of certain types of documents (as an example, documents pertaining to medical issues). Commenter further states that inmates often help each other with legal paperwork. Commenter suggests that inmates should be given the ability to obtain copies of legal documents in order for inmates to help each other do their own legal work properly and professionally.

Accommodation: None.

Response 2: The proposed new language will not create any new barrier for accessing legal material or content as required in Title 15. The proposed language allows the Warden to ensure that a qualified employee is reviewing the requests for duplicating services. As an existing regulation in the California Code of Regulations, Title 15, Section 3163 makes adequate provisions for inmates to assist other inmates in the preparation of legal documents.

COMMENTS #3

Comment 3A: Commenter objects to various portions of the regulation text that are not related to the specific subsection of the proposed regulation language revisions.

Accommodation: None.

Response 3A: The comment is outside the scope of the proposed regulations; therefore, the Department will not formulate a response.

Comment 3B: Commenter contends that unless a person is licensed to practice law, that person would not be able to make a valid decision as to whether the requested document copies are relevant and/or necessary legal documents. Commenter states that any potential savings to the state by restricting copies will be surpassed by the cost of litigation.

Accommodation: None.

Response 3B: Existing regulations do not require employees reviewing inmate requests for forms or photocopies to hold a legal degree and be a member of the California State Bar Association. The Department of Corrections and Rehabilitation, and the State Personnel Board are not proposing to change the minimum qualifications for these positions. The regulation is intended to reduce costs of unnecessary photocopying and wear and tear on equipment, by ensuring that a qualified employee reviews inmate requests concerning duplication. It does not require a licensed attorney to know that legal documents such as law book pages, court transcripts, and law review articles are readily available to a court and only need to be cited or quoted, but not necessarily copied in their entirety.

COMMENTS #4

Comment 4A: Commenter objects to the proposed regulation change. Commenter states that implementation would allow Wardens to place inexperienced and under-trained staff into a position of determining whether or not inmates get “legal copies” for litigation purposes. Commenter states that denying an inmate availability of means to make copies of documents for presentation to the courts, would be in violation of inmates’ constitutional, statutory, and civil rights.

Accommodation: None.

Response 4A: The proposed regulation will give the Warden greater flexibility to ensure that qualified staff is making the determination without an additional restriction based on job title or level.

Comment 4B: Commenter contends that the Department has provided no rational explanation as to why this proposed change is necessary. Commenter states that the proposed change is unreasonable, arbitrary and unjustified.

Accommodation: None.

Response 4B: The change is proposed to ensure that qualified staff are able to make determinations concerning duplication services without the restriction of job title or rank.